

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

DISTRICT JUDGE GERALD BRUCE LEE  
MAGISTRATE JUDGE JOHN F. ANDERSON

MICROSOFT CORPORATION	)	
	)	
Plaintiff,	)	
v.	)	CASE NO. 1:08cv00596-GBL-JFA
	)	
L & Y ELECTRONICS, INC.,	)	
	)	
JOHN A. LINTON, and	)	
	)	
SANGSOON LINTON	)	
	)	
Defendants.	)	

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MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION FOR  
VOLUNTARY DISMISSAL OF VIRGINIA ANTITRUST COUNTERCLAIM

Defendants, L & Y ELECTRONICS, INC., JOHN A. LINTON, AND SANGSOON LINTON (collectively "Defendants" hereinafter) by counsel, submit this Memorandum in Support of their Motion for Voluntary Dismissal of Virginia Antitrust Counterclaim and in support thereof state as follows:

1. Defendants filed their answer and counterclaims on July 14, 2008 (Docket Item No. 9). Defendants' second counterclaim alleged antitrust injury under Federal and Virginia antitrust laws.
2. On August 4, 2008 Plaintiff Microsoft Corporation filed its motion to dismiss Defendants counterclaims without answering or filing a motion for summary judgment

(Docket Item No. 17).

3. Upon further research of the Virginia antitrust claim, Defendants have discovered the following venue requirement:

Virginia Code § 59.1-9.9. Venue.

The venue for all actions and proceedings for violations of this chapter shall be as specified below in this section.

The circuit court of the county or city wherein any defendant: (I) resides; or (ii) regularly or systematically conducts affairs or business activity; or (iii) has property that may be affected by the action or proceeding. Provided, however, that if said defendant does not, as specified in (I), (ii) and (iii) above, reside in, conduct affairs or business activity in, or have such property in the Commonwealth, then the action or proceeding may be brought in the circuit court of the county or city in which the registered office of said defendant is located or wherein the alleged violation occurred.

4. In accordance with Virginia law, Virginia antitrust claims must be brought in a Virginia circuit court. Therefore, Defendants voluntarily request dismissal of their antitrust claim to the extent it is based upon violation of Virginia antitrust law.

WHEREFORE Defendants respectfully request that Defendants' second counterclaim be dismissed pursuant to Federal Rule of Civil Procedure 41 to the extent the second counterclaim is based upon Virginia antitrust law (Virginia Code Section 59.1-9.1 *et seq.*).

Respectfully submitted,

/s/

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CERTIFICATE OF SERVICE

I hereby certify that on this 26<sup>th</sup> day of August, 2008, I will electronically file the forgoing Motion with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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Counsel for Plaintiff  
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/s/

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